
TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #09-193

DEVELOPMENT OF NEW RULES AT [329 IAC 11.5](#) CONCERNING REGISTRATION OF BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at [329 IAC 11.5](#) concerning registration, including construction and expansion of a facility; storage and operational requirements; and closure and financial assurance for biomass anaerobic digestion facilities and biomass gasification facilities.

By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: March 25, 2009, Indiana Register (DIN: [20090325-IR-329090193FNA](#)).

Continuation of First Notice of Comment Period: June 8, 2011, Indiana Register (DIN: [20110608-IR-329090193FCA](#)).

CITATIONS AFFECTED: [329 IAC 11-3-1](#); [329 IAC 11.5](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

IDEM has been approached by several companies interested in developing biomass anaerobic digesters or biomass gasifiers to process specific waste streams and recover methane or ethanol. Most of the proposals have focused on animal manure as the feedstock but some have also proposed to add other organic waste streams. The interest in the development of alternative energy sources has been the primary driver of these projects.

Currently, such an operation may fit under a variety of environmental permitting programs depending upon the specific facility circumstances. For example, a concentrated animal feeding operation (CAFO) could propose to construct and operate such a facility on the same property permitted under the National Pollutant Discharge Elimination System (NPDES) program as a CAFO and incorporate the operation of the facility into the CAFO permit. The same facility proposed at an off-site location that accepted manure from multiple farms would not be a CAFO and instead would be required to obtain either a solid waste processing facility permit or an exemption from the solid waste processing facility rules under [329 IAC 11-3-1\(13\)](#) as a solid waste management activity that does not pose a threat to human health or the environment. Neither the solid waste processing facility rules nor the CAFO rules were written with the regulation of this type of facility in mind. This rule is being proposed to ensure consistent regulation of all affected facilities.

House Enrolled Act 1187, which was effective on July 1, 2011, includes definitions of "biomass", "biomass anaerobic digestion facility", and "biomass gasification facility", as well as requirements that a person cannot construct or expand a biomass anaerobic digestion facility or a biomass gasification facility without obtaining prior approval of the commissioner after the effective date of the statute. The rule will include these requirements.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

The following element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements).

NIFL Element (A) New rules at [329 IAC 11.5](#) concerning requiring registration, storage and operational requirements, closure, and financial assurance for biomass anaerobic digestion facilities and biomass gasification facilities:

- (1) None of the requirements of this draft rule are required under federal law. However, the activities proposed to be regulated by this rule are, in part, required to be regulated under a new Indiana statutory requirement. House Enrolled Act 1187, which was effective on July 1, 2011, includes definitions of "biomass", "biomass anaerobic digestion facility", and "biomass gasification facility", as well as requirements that a person cannot construct or expand a biomass anaerobic digestion facility or a biomass gasification facility without obtaining prior approval of the commissioner. The rule will include these requirements. IDEM has encountered several operations in the state involving biomass anaerobic digestion and biomass gasification. To encourage the development of these facilities and also to protect human health and the environment, this rule proposes registration of these facilities and management standards that will ensure good environmental practices and comply with the 2011 statutory requirements.
- (2) There are no federal requirements for these operations. There is some fiscal impact associated with this rulemaking due to the cost of compliance with basic storage, operational, and closure requirements and the cost of providing a surety bond for facility cleanup and closure. This rulemaking allows for the no cost registration, including construction approval, of a biomass anaerobic digestion facility and a biomass gasification facility. It is unknown at this time how many facilities will be registered under this rule. This rulemaking allows for the registration of these digesters and biomass gasification facility at no cost. There is some cost of compliance for planning, storage and operational requirements, closure and a surety bond per facility per year under the registration-\$5,000-\$35,000, depending on the amount of waste received by the facility.
- (3) The information used to develop this rule comes from IDEM's implementation of the existing solid waste processing

facility program and information provided by facilities that would be affected by the rule.

Potential Fiscal Impact

There is some fiscal impact associated with this rulemaking due to the cost of compliance with basic storage, operational, and closure requirements and the cost of providing a surety bond for facility cleanup and closure. However, the rulemaking provides relief to the regulated community from the requirement of obtaining a solid waste processing facility permit that costs \$12,150 every five years and \$2,000 every year for an operating fee paid to IDEM. In addition, there are the costs of developing the permit application (\$2,500-\$25,000) and the cost of compliance (\$5,000-\$20,000 per year). This rulemaking allows for the no cost registration of biomass digester and gasifier facilities. There is some cost of compliance for planning, storage and operational requirements, closure and a surety bond per facility per year under the registration-\$5,000-\$35,000, depending on the amount of waste received by the facility. It is unknown at this time how many facilities will be registered under this rule.

There is a minimal fiscal impact on the agency in terms of costs to process the registrations because a registration has minimal engineering and geology concerns and requirements compared to a permit.

Comments on the potential fiscal impact of the rule are requested.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn West, Rules Development Section, Office of Legal Counsel at (317) 232-3593 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 25, 2009, through April 24, 2009, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF FIRST COMMENT PERIOD

IDEM requested public comment from June 8, 2011, through July 8, 2011, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Farm Bureau, Justin T. Schneider, Staff Attorney (FB)

Indiana Pork Advocacy Coalition, Joshua D. Trenary (IPAC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Our first point would be the separation of rulemakings for registration of mobile home salvaging operations from the registration of biomass digesters, gasifiers, and boilers. (FB) (IPAC)

Response: IDEM agrees and has initiated three separate rulemakings for biomass digesters, #09-193; alternative fuel, #09-194; mobile home salvaging, #10-253.

Comment: In the First Notice of Comment Period, the majority of the discussion of proposed projects focused on the utilization of livestock manure for energy production. However, we are aware of numerous other proposed projects which will utilize diverse organic sources as fuel, i.e., sawdust, grass clippings, corn stalks, tree branches and trimmings, among other cellulosic materials. The biomass materials covered in this proposed rulemaking should be inclusive of other biomass materials beyond livestock manure. (FB)

Response: IDEM agrees and has included the statutory definition of biomass, which is inclusive beyond livestock manure.

Comment: We believe alternative 1 as an exclusion from permitting for solid waste processing would be appropriate. A new article for registration, operational requirements, closure and financial assurance would provide needed guidance and appropriate oversight. Clearly this operation of these facilities should not have a negative impact on human health and the environment; but as written, this proposal does raise concerns about whether it is appropriate to place these regulatory programs under the auspices of solid waste. (FB)

Response: IDEM wants consistent requirements for all biomass facilities and this will make the biomass digester registration separate from solid waste processing facility permitting. The new statute designates IDEM as the regulatory agency for biomass digester facilities.

Comment: We recognize that solid waste as defined in [IC 13-11-2-205](#) includes material from agricultural operations with an exclusion for "manure or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation". Although there may be some uncertainty about the scope of this exclusion, the manure utilized in the energy production process may still be returned to the farm as fertilizer. This calls into question the appropriateness of classifying these organic energy sources as "solid waste". (FB)

Response: IDEM disagrees that "processed" manure and/or other biomass should be included in the exclusion. IDEM will comply with HEA 1187 and not regulate the biomass facilities as a solid waste processing facility.

Comment: Unfortunately, there has been recent debate about how manure should be classified for regulatory purposes. Even within Indiana, there have been efforts to define manure as a "hazardous waste". It is imperative that the categorization of manure and other organic energy materials not be used to change the classification of those materials into something they are not. There must be a new direction in moving away from classifying these materials as a waste and recognizing them as a feedstock for energy production. (FB)

Response: IDEM recognizes the value in encouraging the use of manures, crop residues, and selected waste streams from industry in biomass units that promote energy recovery and/or recovery of valuable byproducts. It is this recognition that has prompted IDEM to propose this rule that removes this activity from the solid waste processing permit category and creates a less burdensome registration process that can be utilized for any legitimate feedstock.

Comment: With respect to the utilization of manure produced at livestock operations already subject to the regulation of IDEM, this registration proposal needs to be such that any permit requirements for construction and operation of a digester can be handled as part of the permitting process for livestock production facilities. As proposed, the rules for construction and operation of a livestock operation and rules for construction and operation of a digester will be handled by different regulatory boards. It is imperative that state regulatory programs put in place by separate boards be complementary to one another. The ability to construct a confined feeding operation with a digester should not be unduly burdensome. (FB)

Response: While the regulatory authority for digesters and livestock operations are under two separate boards, the staff involved with evaluating permits and registrations for both are within the Permits Branch of the Office of Land Quality. The same staff will be involved with reviewing an application for a digester, regardless if it is accepting only animal manure or one hundred percent (100%) industrial waste.

Comment: The goal of the state should be to create an environment whereby manure and other biomass sources are utilized as energy sources. The system needs to be encouraging, not discouraging. It may be appropriate to have separate regulatory programs with IDEM; however, those programs cannot be operated without regard for another. The more difficult for producers to comply with the program, the less likely they are to install digesters or other energy conversion systems. (FB) (IPAC)

Response: IDEM agrees and is working very hard to encourage facilities to install biomass digesters or other energy conversion systems without having burdensome rules from several different IDEM program areas. There will be uniform standards for biomass digester facility registration that is under one rule and does not require a solid waste processing facility permit or the associated fee.

Comment: We urge IDEM to consider whether treating these facilities as solid waste facilities is the best option. If the decision is made to continue to proceed this way, there will be a critical need for compatibility. (FB)

Response: It is not clear what is meant by the phrase "treating these facilities as solid waste facilities". IDEM is attempting to establish a uniform process that removes biomass digesters from the requirement of being permitted as a solid waste facility and instead requires a registration for accepting a variety of feedstocks. Some of those feedstocks may have historically been classified as a solid waste.

Comment: We question the inclusion of the regulatory program in the solid waste program. It was our opinion then and it remains that biomass anaerobic digesters and biomass gasifiers should generally not be considered solid waste processing facilities. This view was supported by the actions of the Indiana General Assembly in House Enrolled Act 1187. (FB) (IPAC)

Response: IDEM agrees, there will be uniform standards for biomass digester facility registration that are under one rule and does not require a solid waste processing facility permit or the associated fee. IDEM will comply with HEA 1187 and not regulate the biomass facilities as a solid waste processing facility.

Comment: Through HEA 1187, the General Assembly authorized a stand-alone regulatory program within the solid waste program area of IDEM for digesters and gasifiers which solely use biomass as a feedstock. Under the provisions of Indiana Code 13-20-10.5-3, an anaerobic digestion or gasification facility which uses solid waste in conjunction with biomass may be regulated as a solid waste processing facility. Any regulation which is adopted needs to clearly define what will trigger requirements for the digester or gasifier to be regulated as a solid waste processing facility. We suggest that the commingling of biomass with hazardous waste should trigger the greater oversight by IDEM. (FB) (IPAC)

Response: IDEM will comply with HEA 1187 and not regulate the biomass facilities as a solid waste processing facility. IDEM agrees, there will be a uniform standard for biomass digester facility registration that is under one rule and does not require a solid waste processing facility permit or the associated fee. However, if a facility accepted hazardous waste to commingle with biomass and process, this would be regulated as a hazardous waste TSD under RCRA at [329 IAC 3.1](#). The law provides that any mixing or diluting of hazardous waste with any other waste or material causes all resulting mixes to be a hazardous waste.

Comment: We anticipate there will be questions, both now and in the future, about products that can be used as biomass. Currently, there is an interest in utilizing mortalities as a biomass feedstock in digesters and gasifiers. In reviewing the definition of biomass in [IC 13-11-2-16.6](#), we opine that mortalities are included through the inclusion of "agricultural wastes and residues" and "animal wastes and byproducts. . ." Clearly, the system utilized would need to have the capacity to handle animal mortalities, and in the event it does, we believe the statute authorizes their use as biomass without triggering the need to be regulated as a solid waste processing facility. (FB)

Response: The new registration rule for biomass digesters and gasifiers currently does not allow the use of dead animals. Most of these facilities do not heat sufficiently to sterilize this potentially infectious waste. Dead animals are regulated under the rules of the Board of Animal Health. IDEM is open to further discussion on this topic if specific concerns with effective treatment can be resolved.

Comment: Questions have also been raised about whether food scraps are considered biomass. The General Assembly spoke to this issue in part 16.6(7) by including "byproducts of processing agricultural crops" in the definition of biomass. We do not believe the inclusion of this phrase is limited to mechanical processing which takes place in the field during harvest or elsewhere on the farm. Biomass from those activities would seem to be covered in part 16.6(2) as "agricultural wastes and residues." Thus, it would appear that scraps from processing commodities into food products or further refining food products into final packaged form would be considered biomass and could be used as a feedstock in an anaerobic digester or gasifier without subjecting the operation to regulation as a solid waste processing facility. (FB)

Response: The new registration rule will include food scraps under the definition of appropriate feedstock. Inclusion of food scraps with biomass would not cause the operation to be regulated as a solid waste processing facility.

Comment: In making clear that biomass anaerobic digesters and biomass gasifiers are not to be regulated as a solid waste processing facility, we believe the General Assembly was also indicating that a less rigorous permitting scheme is

appropriate. We suggest that IDEM should proceed with registration of facilities, as had been proposed in the original first notice for this rulemaking, rather than establishing a rigid application process where plans are subject to extensive review by IDEM staff. As a whole, biomass anaerobic digestion and biomass gasification pose relatively small risk of harm to the environment. They are generally of a size and operated in such a manner that there is not a large volume of biomass maintained at the location. Instead, they are more generally flow-through facilities, i.e., the biomass is provided in a manner more akin to its daily usage rather than stored for later use. (FB) (IPAC)

Response: IDEM agrees and is proceeding with the registration for biomass digesters and gasifiers.

Comment: This is not to say facilities, such as digesters, which are on a livestock farm will not be in the vicinity of a large amount of biomass. However, in those situations, it is likely the biomass anaerobic digester or gasifier will be regulated under a separate program, such as the CFO or CAFO NPDES permitting program. We note that in [IC 13-20-10.5-1\(b\)](#), the General Assembly stated that if the digester or gasifier is located at a confined feeding operation that it receive its approval through the confined feeding operation program rather than through this separate permitting procedure. (FB)

Response: IDEM envisions incorporating the biomass registration into the CFO or CAFO permit for such an appropriate facility. While the registration may fall under a separate regulation, the approvals will be coordinated.

Comment: Through the use of a registration process, IDEM will be able to maintain information on location of biomass based energy systems and will have the opportunity to perform inspections to determine whether the facilities are operated in such a manner that they do not cause harm to human health and the environment. Further, a registration process with accountability for the feedstock used in energy production will provide IDEM with a tool to determine whether a facility is using products which are not biomass and subsequently subject to regulation as a solid waste processing facility. (FB)

Response: IDEM agrees. A registration under Title 329 provides protection for human health and the environment, but is much less burdensome and costly. The registration would provide the best means of oversight.

Comment: We also suggest as part of this process that best management practices be utilized as the regulatory tool. Issues such as run-on, run-off control are important for the protection of water quality. Practices such as diverting storm water or maintaining vegetated filter strips could ensure water quality is protected. However, the operators of the facility should be given the opportunity to choose what practices will work best for their facility rather than for registration to prescribe certain practices which may provide little to no environmental protection under the particular circumstances. (FB)

Response: The new rule for registration of biomass anaerobic digesters and gasifiers does not currently have any prescribed methods for controlling storm water run-on, run-off. However, a facility must comply with any applicable storm water standards and rules.

Comment: We are concerned that materials not fitting the new statutory definition of biomass but also not posing any threat to human health of the environment might still be classified as solid waste. Manure used in a digester may require other materials to be commingled with it for the digester to function properly. If these commingled materials are classified as solid waste, this could trigger the provision at [IC 13-20-10.5\(3\)\(a\)](#), allowing the department to again regulate a facility as a solid waste processing facility. (IPAC)

Response: IDEM recognizes that there may be a wide variety of materials that are legitimate feedstock for a biomass digester and is attempting to provide flexibility under the proposed rule to accommodate them under a registration.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#09-193(SWMB) (Biomass Digester Rule)

Janet Pittman

Office of Legal Counsel

Indiana Department of Environmental Management

100 North Senate Avenue

MC 65-45

Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the east reception desk on the thirteenth floor, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5970, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 26, 2011.

Additional information regarding this action may be obtained from Lynn C. West, Rules Development, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 11-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 11-3-1](#) Exclusions; general

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#)

Affected: [IC 13-11-2-245](#); [IC 13-11-2-266](#); [IC 13-18-10](#); [IC 13-19-3-3](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

(1) Processing and disposing of only uncontaminated:

- (A) rocks;
- (B) bricks;
- (C) concrete;
- (D) road demolition waste materials; or
- (E) dirt.

(2) Land application activities regulated by [327 IAC 6.1](#) and [327 IAC 7](#).

(3) Confined feeding control activities regulated by [IC 13-18-10](#).

(4) Wastewater discharge activities regulated by [327 IAC 5](#).

(5) Processing of waste when the waste, other than tires, has been segregated from the general MSW stream prior to arrival at a processing facility. To qualify for exclusion from this article, the facility must do the following:

- (A) In the regular course of business, receive distinct and recognizable solid waste items that do not require substantial further processing. Substantial further processing includes any thermal or chemical treatment of the waste, as well as physical processing such as shredding, breaking, compacting, or mixing with other materials or waste beyond the processing needed to render the waste more amenable for transport.
- (B) Return those items for reuse in manufacturing including any intermediate processing steps before being sent for manufacturing.
- (C) Not have more than ten percent (10%) of the solid waste that passes through the facility ultimately taken for final disposal. This is determined by the weight of material passing through the facility in a calendar quarter.

(6) Processing ~~except for incineration~~, of solid waste that takes place at the generating facility.

(7) Processing and disposal of uncontaminated and untreated natural growth solid waste, including the following:

- (A) Tree limbs.
- (B) Stumps.
- (C) Leaves.
- (D) Grass clippings.

(8) The disposal of coal ash, transported by water, into an ash pond that has received a water pollution control facility construction permit under [327 IAC 3](#).

(9) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivision (8).

(10) Uses and disposal of coal waste as exempted from regulation in [IC 13-19-3-3](#).

(11) The legitimate use of iron and steelmaking slags, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).

(12) The legitimate use of foundry sand that has been demonstrated as suitable for restricted waste site Type III under the provisions of [329 IAC 10-9](#), including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).

(13) Solid waste management activities or legitimate uses of solid waste determined by the commissioner to not pose a threat to public health or the environment.

(14) Processing or storage of electronic waste or e-waste, which is any solid waste that is the following or has the following component:

- (A) A circuit board, including a shredded circuit board.
- (B) A diode.
- (C) A CRT.
- (D) A computer.
- (E) An electronic device.

E-waste does not include vehicles, as defined by [IC 13-11-2-245](#), or white goods, as defined by [IC 13-11-2-266](#). Electronic waste is regulated under [329 IAC 16](#) and must comply with all applicable standards and requirements under [329 IAC 16](#).

(15) The transfer of closed waste containers meeting the following criteria where the solid waste is not removed from the container:

- (A) The container remains closed.
- (B) The solid waste in the container is only non-municipal solid waste.
- (C) The solid waste is stored in the container for not more than ten (10) days.

(16) Biomass anaerobic digestion facilities and biomass gasification facilities that are registered under [329 IAC 11.5](#).

(17) Any mobile home salvaging operation registered under [329 IAC 11.6](#).

(18) Any facility that uses industrial process waste or commercial waste as an alternative fuel source and is registered under [329 IAC 11.7](#).

(19) Crematoriums for human and animal remains.

(20) Burning engineered wood waste as a fuel. As used in this subdivision, "engineered wood", also called composite wood or man-made wood, includes a range of derivative wood products that are manufactured by binding together the strands, particles, fibers, or veneers. Plywood is sometimes called the original engineered wood.

(Solid Waste Management Board; [329 IAC 11-3-1](#); filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741; readopted filed May 14, 2007, 1:53 p.m.: [20070523-IR-329070138BFA](#); filed Aug 15, 2007, 10:22 a.m.: [20070912-IR-329050181FRA](#); filed Feb 13, 2008, 1:38 p.m.: [20080312-IR-329050297FRA](#); filed Jun 28, 2010, 2:11 p.m.: [20100728-IR-329060070FRA](#))

SECTION 2. [329 IAC 11.5](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 11.5. BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES

Rule 1. General Provisions

[329 IAC 11.5-1-1](#) Purpose

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2-1](#); [IC 36-9-30-35](#)

Sec. 1. (a) This article regulates biomass anaerobic digestion facilities and biomass gasification facilities through the following:

- (1) Providing for the registration, including construction and expansion, of facilities storing or processing biomass or appropriate feedstock for energy production or reusable treated waste, such as animal bedding.
- (2) Providing standards for storing or processing biomass or appropriate feedstock for energy production or reusable treated waste, such as animal bedding.
- (3) Providing cleanup and closure standards for facilities that have stored or processed biomass or appropriate feedstock for energy production or reusable treated waste, such as animal bedding.
- (4) Providing for financial assurance for the cleanup and closure of facilities that have stored or processed biomass or appropriate feedstock for energy production or reusable treated waste, such as animal bedding.

(b) This article replaces all solid waste processing standards and permitting requirements under [329 IAC 10](#) and [329 IAC 11](#) for a facility's use of biomass or appropriate feedstock for energy production or reusable treated waste, such as animal bedding. This article does not apply to disposal or to incineration.

(Solid Waste Management Board; [329 IAC 11.5-1-1](#))

[329 IAC 11.5-1-2](#) Applicability

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. This article applies to a person doing any of the following:

- (1) Constructing or expanding a biomass anaerobic digestion facility or a biomass gasification facility for recovery of materials or energy.
- (2) Storing biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility.
- (3) Recycling biomass or appropriate feedstock for recovery of materials or energy through a biomass

anaerobic digestion facility or a biomass gasification facility.

(4) Processing biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility.

(Solid Waste Management Board; [329 IAC 11.5-1-2](#))

[329 IAC 11.5-1-3](#) Severability

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 3. If any provision of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or application of this article that can be given effect without the invalid provision or application.

(Solid Waste Management Board; [329 IAC 11.5-1-3](#))

[329 IAC 11.5-1-4](#) Acts prohibited

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. No person who owns or operates a facility to which this article is applicable shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of:

- (1) a fire hazard;
- (2) a vector attraction;
- (3) air, land, or water pollution; or
- (4) other contamination.

(Solid Waste Management Board; [329 IAC 11.5-1-4](#))

[329 IAC 11.5-1-5](#) Penalties and enforcement

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 5. Penalties for violation of this article shall be governed by [IC 13-14](#) and [IC 13-30](#).

(Solid Waste Management Board; [329 IAC 11.5-1-5](#))

[329 IAC 11.5-1-6](#) Local approvals

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 6. The registration that is required by this article does not supersede or replace the need to obtain any local approvals.

(Solid Waste Management Board; [329 IAC 11.5-1-6](#))

[329 IAC 11.5-1-7](#) Commissioner approval

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 7. In this article, any approval that is given by the commissioner is based on protection of human health and the environment.

(Solid Waste Management Board; [329 IAC 11.5-1-7](#))

[329 IAC 11.5-1-8](#) Incorporation by reference material

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 8. In this article, references to federal laws, regulations, and state rules, including laws, regulations, and rules that are incorporated by reference, are to the version that is effective as of the effective date of this article.

(Solid Waste Management Board; [329 IAC 11.5-1-8](#))

Rule 2. Definitions

[329 IAC 11.5-2-1](#) Definitions

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-11-2](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. In addition to the definitions in [IC 13-11-2](#) and [329 IAC 11-2](#) that are applicable, the definitions in this rule apply throughout this article.

(Solid Waste Management Board; [329 IAC 11.5-2-1](#))

[329 IAC 11.5-2-2](#) "Appropriate feedstock" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. "Appropriate feedstock" means a specific solid waste stream that has been segregated from other solid wastes and that can be successfully processed with other solid waste or products for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility. Animal manure, biomass, food waste, cooking oil and grease, live stock operation residues, industrial waste, such as paper pulp, sewage sludge, or pallets are examples of common appropriate feedstocks.

(Solid Waste Management Board; [329 IAC 11.5-2-2](#))

[329 IAC 11.5-2-3](#) "Biomass" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 3. "Biomass" means biological material that is available on a renewable recurring basis and is used as a source of renewable energy, including the following:

- (1) Agricultural crops.
- (2) Agricultural wastes and residues.
- (3) Wood and wood byproducts, including the following:
 - (A) Wood residue.
 - (B) Forest thinning.
 - (C) Mill residue wood.

- (4) Animal wastes and byproducts, including manure.
- (5) Aquatic plants.
- (6) Algae.
- (7) Byproducts of processing agricultural crops.

(Solid Waste Management Board; [329 IAC 11.5-2-3](#))

[329 IAC 11.5-2-4](#) "Biomass anaerobic digestion facility" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. "Biomass anaerobic digestion facility" means a facility that incorporates equipment that promotes the decomposition of biomass to simple organics and biogas products in the oxygen free environment of a closed, sealed chamber. The term includes a methane recovery system.

(Solid Waste Management Board; [329 IAC 11.5-2-4](#))

[329 IAC 11.5-2-5](#) "Biomass gasification facility" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 5. "Biomass gasification facility" means a facility that incorporates equipment to carry out a thermochemical process that, with little or no oxygen present, converts biomass into a synthesis gas.

(Solid Waste Management Board; [329 IAC 11.5-2-5](#))

[329 IAC 11.5-2-6](#) "Closure" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 6. "Closure" means the activities to be completed at the registered facility at the end of biomass and appropriate feedstock acceptance and processing.

(Solid Waste Management Board; [329 IAC 11.5-2-6](#))

[329 IAC 11.5-2-7](#) "Contingency action plan" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 7. "Contingency action plan" means a written course of action to be followed for emergency response in the event of an emergency that causes the release of contaminants into the environment or for the method or methods of waste management or disposal if the facility is unable to operate or process solid waste for twenty-four (24) hours or longer.

(Solid Waste Management Board; [329 IAC 11.5-2-7](#))

[329 IAC 11.5-2-8](#) "Discard" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 8. "Discard" has the meaning set forth in [329 IAC 11-2-9.8](#).

(Solid Waste Management Board; [329 IAC 11.5-2-8](#))

[329 IAC 11.5-2-9](#) "Disposal" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-11-2-57](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 9. "Disposal" has the meaning set forth in [IC 13-11-2-57](#). For purposes of this article, disposal must meet the requirements in [329 IAC 11.5-7-1](#).

(Solid Waste Management Board; [329 IAC 11.5-2-9](#))

[329 IAC 11.5-2-10](#) "Financial assurance" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 10. "Financial assurance" means, for purposes of this article, a bond acquired by the owner or operator of the registered facility in an amount sufficient to provide for:

- (1) remediation of contamination at the registered facility; and**
- (2) closure of the registered facility.**

(Solid Waste Management Board; [329 IAC 11.5-2-10](#))

[329 IAC 11.5-2-11](#) "Generator" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 11. "Generator" means the person that discards biomass or other appropriate feedstock regulated by this article.

(Solid Waste Management Board; [329 IAC 11.5-2-11](#))

[329 IAC 11.5-2-12](#) "Household hazardous waste" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 12. "Household hazardous waste" means hazardous waste:

- (1) generated by a household; and**
- (2) exempt from the requirements of the hazardous waste rules at [329 IAC 3.1](#).**

(Solid Waste Management Board; [329 IAC 11.5-2-12](#))

[329 IAC 11.5-2-13](#) "Landowner" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 13. "Landowner" means an owner of real property, as described in the recorded deed and the current county or counties plats. For purposes of this article, the term includes the lessee of the land.

(Solid Waste Management Board; [329 IAC 11.5-2-13](#))

[329 IAC 11.5-2-14](#) "Operator" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 14. "Operator" means the person responsible for managing and overseeing a facility regulated under this article.

(Solid Waste Management Board; [329 IAC 11.5-2-14](#))

[329 IAC 11.5-2-15](#) "Owner" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 15. "Owner" means the person who owns a facility required to register under this article.

(Solid Waste Management Board; [329 IAC 11.5-2-15](#))

[329 IAC 11.5-2-16](#) "Registered facility" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 16. "Registered facility" means a:

- (1) storage;
- (2) recycling;
- (3) processing; or
- (4) reuse or recovery;

facility that is registered under this article.

(Solid Waste Management Board; [329 IAC 11.5-2-16](#))

[329 IAC 11.5-2-17](#) "Registration" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 17. "Registration" means the notification to, and the approval by, the commissioner regarding the construction, expansion, processing, or storage of biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility that:

- (1) meets the requirements for registration; and
- (2) must register under this article.

(Solid Waste Management Board; [329 IAC 11.5-2-17](#))

[329 IAC 11.5-2-18](#) "Residue" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 18. "Residue" means, for purposes of this article, any discarded biomass and appropriate

feedstock remaining after storing, recycling, or processing.

(Solid Waste Management Board; [329 IAC 11.5-2-18](#))

[329 IAC 11.5-2-19](#) "Speculative accumulation" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 19. "Speculative accumulation" means the storage before processing or recycling of large quantities of biomass or appropriate feedstock without a current outlet for the processed or recycled materials. It is a rebuttable presumption that storage of biomass, appropriate feedstock, or residue for more than six (6) months constitutes disposal.

(Solid Waste Management Board; [329 IAC 11.5-2-19](#))

[329 IAC 11.5-2-20](#) "Storage" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 20. "Storage" means the retention, containment, or accumulation of biomass or appropriate feedstock intended for processing on a temporary basis in such a manner that it does not:

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

The term does not include speculative accumulation.

(Solid Waste Management Board; [329 IAC 11.5-2-20](#))

[329 IAC 11.5-2-21](#) "Waste determination" defined

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 21. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at [329 IAC 3.1](#), the PCB rules at [329 IAC 4.1](#), or the solid waste rules at [329 IAC 10](#). The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C, or equivalent methods approved under 40 CFR 260.21 to ascertain the following:

- (1) The waste is a hazardous waste under 40 CFR 262.11 and is regulated under [329 IAC 3.1](#) because of the following:
 - (A) The waste is not excluded from regulation under 40 CFR 261.4.
 - (B) The waste is a listed waste under 40 CFR 261, Subpart D.
 - (C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C.
- (2) The waste contains regulated amounts of PCBs and is regulated under [329 IAC 4.1](#).
- (3) The waste is a solid waste and can be disposed of under [329 IAC 10](#).
- (4) The waste is a solid waste and can be processed under [329 IAC 11](#).

(Solid Waste Management Board; [329 IAC 11.5-2-21](#))

Rule 3. Exclusions

[329 IAC 11.5-3-1](#) Exclusions

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Sec. 1. The following are excluded from regulation under this article:

- (1) Facilities that hold a valid permit under [329 IAC 10](#) or [329 IAC 11](#) to treat, process, store, or dispose of solid or hazardous waste that are not described in [329 IAC 11.5-1-2](#).
- (2) A wastewater treatment plant as defined under [IC 13-11-2-258](#) that has a permit as a publicly owned treatment works (POTW) or an industrial treatment works under [327 IAC 5](#) that has a permit to discharge and does not store solid waste.
- (3) Processing of uncontaminated and untreated natural growth solid waste and saw dust including tree limbs, stumps, leaves, and grass clippings.
- (4) Facilities permitted under [329 IAC 3.1](#) are not required to obtain permits for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.
- (5) Wastewater discharge activities regulated by [327 IAC 5](#).

(Solid Waste Management Board; [329 IAC 11.5-3-1](#))

Rule 4. Registration

[329 IAC 11.5-4-1](#) Registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 4-21.5-3](#); [IC 13-15-7](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owners or operators of all facilities described under [329 IAC 11.5-1-2](#) are required to register, unless excluded under [329 IAC 11.5-3-1](#). A registration is for a fixed term not to exceed five (5) years, unless renewed.

(b) The registration form must be:

- (1) filled out completely; and
- (2) submitted to the commissioner on a form or in a format provided by the commissioner.

(c) The commissioner may require the registration to be submitted electronically with an electronic signature.

(d) A registration may be submitted electronically via electronic media.

(e) The form for renewal of the registration must be submitted to the department at least sixty (60) days before the expiration date of the registration.

(f) The registration must be modified and submitted to the department for approval from the commissioner prior to any of the following:

- (1) The process at the biomass anaerobic digestion facilities and biomass gasification facilities will change.
- (2) The location of the biomass anaerobic digestion facilities and biomass gasification facilities will change.
- (3) The amounts or types of biomass or appropriate feedstock specified in subsection (g)(5) will change.
- (4) The biomass anaerobic digestion facilities or biomass gasification facilities will be expanded.

(g) The registration must include the following information:

- (1) The name of the owner, operator, and landowner, if different from the registered facility owner.
- (2) Addresses and telephone numbers for the owner, operator, and landowner.
- (3) The location and address of the facility.
- (4) The type of facility.

- (5) The type and maximum amounts, in tons, of biomass or appropriate feedstock that are delivered daily and the maximum amounts of biomass, appropriate feedstock, and residues to be stored on-site and the probable duration of storage in days.
- (6) Incoming waste testing and screening procedures to ensure that the registered facility is only receiving waste streams that are acceptable and approved for use at this registered facility.
- (7) A plot plan that has a scale, including a bar scale, elevations that correlate with U.S. Geological Survey mean sea level data, north arrow, a map legend, facility boundary, roads, drainage ways, and identification on the plot plan of where the biomass, appropriate feedstock, and residues will be stored or processed in:
 - (A) a building;
 - (B) containers;
 - (C) vehicles;
 - (D) lagoons;
 - (E) tanks; or
 - (F) other proposed storage locations subject to approval by the commissioner.
- (8) The construction plans and construction material for all areas where biomass, appropriate feedstock, and residues will be:
 - (A) stored; or
 - (B) processed.
- (9) A detailed description of the:
 - (A) storage;
 - (B) handling;
 - (C) processing;
 - (D) treatment; and
 - (E) final disposition;of the biomass or appropriate feedstock.
- (10) The maximum total amount, in tons, of biomass or appropriate feedstock capable of being processed per day.
- (11) Other permits from the department for the facility.
- (12) The date the facility became operational or will be operational.
- (13) A contingency action plan that specifies the following:
 - (A) An outline of the method or methods of waste disposal to be implemented if the registered facility is unable to operate or process and there is no more remaining storage capacity for the alternative fuel that has been approved in the registration.
 - (B) The maximum amounts of biomass, appropriate feedstock, and residues as specified in subdivision (5) at the facility site at any one (1) time.
 - (C) Emergency response plan for controlling:
 - (i) fire;
 - (ii) explosion;
 - (iii) spills; and
 - (iv) contamination.
 - (D) If required, a spill prevention control plan, under Section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.
 - (E) A floor plan of the facility and areas where biomass and appropriate feedstock are stored.
 - (F) A plot plan of the registered facility. The plot plan must include the information required in subdivision (7).
 - (G) A United States Geological Service (USGS) map that identifies the facility location and any access roads.
 - (H) Telephone numbers for the fire department responsible for responding to a fire or emergency at the facility.
- (14) A description of any residue, leachate, or wastewater resulting from the processing or storing of biomass or appropriate feedstock. Applicable surface water controls under [327 IAC 15-6](#) must be specified.
- (15) Material handling and housekeeping procedures for the following areas:
 - (A) Storage.
 - (B) Waste processing.
 - (C) Loading.
 - (D) Unloading.
- (16) The financial assurance documentation required under [329 IAC 11.5-9-1](#).

(h) The owner or operator must sign and submit the following certification with the registration: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(i) The commissioner or a designee may deny, revoke, limit the length of, or place additional conditions on a registration if the commissioner determines one (1) or more of the following:

- (1) The commissioner, under [IC 13-15-7](#), has revoked the applicant's previous registration under this article.
- (2) The registration form is incomplete.
- (3) There is a violation of a requirement of this article or a condition of the registration.
- (4) There is a failure to disclose all relevant facts in obtaining a registration under this article.
- (5) There is a misrepresentation made in obtaining a registration under this article.
- (6) The permittee fails to meet the requirements for a registration.
- (7) The permittee fails to correct a condition as agreed to in an agreed order with the department or commissioner's order, or within the time established in the agreed order or commissioner's order, come into compliance with:
 - (A) the registration;
 - (B) this article; or
 - (C) both.

(j) The issuance of a registration does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(k) A registration is not transferable. A new owner or operator:

- (1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and
- (2) may operate the facility in the interim.

(Solid Waste Management Board; [329 IAC 11.5-4-1](#))

[329 IAC 11.5-4-2](#) Transition for submitting registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 2. (a) All owners or operators that are required to register under this article must submit a registration form within sixty (60) days after the effective date of this article. These facilities may continue to operate unless the registration is denied. All owners and operators with an existing biomass anaerobic digestion facility or a biomass gasification facility that intend to expand the facility must resubmit the registration for approval by the commissioner prior to expanding the facility.

(b) No person that plans a new biomass anaerobic digestion facility or biomass gasification facility that is required to be registered under this article may construct or operate without prior registration approval by the commissioner.

(Solid Waste Management Board; [329 IAC 11.5-4-2](#))

Rule 5. Storage Requirements

329 IAC 11.5-5-1 Storage requirements for biomass and appropriate feedstock

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) All registered facilities must store biomass and appropriate feedstock, or any residue in a manner that does not threaten human health and protects the environment. The following are examples of adequate storage:

- (1) A building that is weather tight with impervious floor.
- (2) A container capable of being enclosed.
- (3) A completely enclosed vehicle.
- (4) Tanks, lagoons, or other storage, as approved by the commissioner.

(b) Speculative accumulation of biomass and appropriate feedstock is not allowed. Facilities registered under this article must engage in only legitimate reuse or recycling as demonstrated by the following:

- (1) The owner or operator of the registered facility must have a plan to reuse or recycle the biomass, appropriate feedstock, and residue, if applicable, which identifies the:
 - (A) biomass, appropriate feedstock, and residue, if applicable, to be reused, recycled, or processed; and
 - (B) manner in which the biomass, appropriate feedstock, and residue, if applicable, is intended to be reused, recycled, or processed.
- (2) Biomass, appropriate feedstock, and residue may be stored for periods exceeding six (6) months if a reason is provided in the registration, such as a contract providing for longer storage.
- (3) The biomass and appropriate feedstock, or any residue is stored in a manner reflecting its value as a commodity and in accordance with this rule.
- (4) The registered facility must maintain records for a period of five (5) years, recorded in a consistent manner either daily, weekly, or monthly for biomass and appropriate feedstock received by the facility, and biomass and appropriate feedstock processed at the facility, including the following:
 - (A) The total amount in estimated tons of biomass and appropriate feedstock received.
 - (B) The total amount in estimated tons of biomass, appropriate feedstock, and residue, if applicable, processed.
 - (C) The total amount in estimated tons of residue shipped from the facility for disposal.
- (5) Shipping papers and manifests as applicable.

(c) Adequate measures must be in place to control fire hazards, and the contingency action plan required under [329 IAC 11.5-4-1\(g\)\(13\)](#) must be submitted to the local fire department that services the area.

(Solid Waste Management Board; [329 IAC 11.5-5-1](#))

Rule 6. Operational Requirements

329 IAC 11.5-6-1 Operational requirements for processing of biomass and appropriate feedstock

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) A facility that processes or stores biomass and appropriate feedstock must have the following:

- (1) A sign at least one (1) foot high by two (2) feet wide prominently displayed by the door or entrance to the facility and legibly containing the following information:
 - (A) The name of the facility.
 - (B) The IDEM registration number.
 - (C) The name and telephone number of a designated emergency contact person.
- (2) Processing on an impervious surface such as concrete or asphalt with curbs to contain spills. All

liquids or leachate must be controlled and collected.

(3) Adequate measures in place to control fire hazards, and equipment available to control fires. The contingency action plan required under [329 IAC 11.5-4-1\(g\)\(13\)](#) must be submitted to the local fire department that services the area.

(4) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.

(5) Access control to the facility.

(6) Adequate control of the following:

- (A) Dust.
- (B) Odors.
- (C) Wastewater.
- (D) Vectors.
- (E) Litter.
- (F) Leachate.

(7) Monitoring of incoming waste. Any waste that the facility is not permitted or registered to receive for processing must be isolated and removed from the registered facility.

(8) Putrescible waste that is stored must be fed into the biomass anaerobic digestion facility or biomass gasification facility within seventy-two (72) hours of receipt at the registered facility.

(b) Any container or vehicle that stores biomass or appropriate feedstock that is:

- (1) flammable;
- (2) subject to blowing;
- (3) a vector attraction; or
- (4) noxious odor-producing;

must be closed at the end of the operating day.

(c) The owner or operator shall record and retain at the registered facility, or in an alternative location approved by the commissioner, all records, reports, or audits required by this article until certification of closure is deemed adequate by the commissioner under [329 IAC 11.5-8-1\(f\)](#). The following information must be retained:

- (1) A paper copy or an accessible copy of the electronically submitted registration.
- (2) A contingency action plan as required under [329 IAC 11.5-4-1\(g\)\(13\)](#).
- (3) The records required under [329 IAC 11.5-5-1\(b\)\(2\)](#).
- (4) The training log required under subsection (f).
- (5) The results of any waste determination tests on the residues generated by the registered facility.

(d) All records required by this article must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner.

(e) No hazardous waste that is regulated by [329 IAC 3.1](#) shall be processed at any registered facility, unless the facility is permitted under [329 IAC 3.1](#) to process hazardous waste.

(f) Employees must be trained on safety, emergency, and operational procedures for the facility. A training log must be kept at the registered facility for five (5) years stating the following:

- (1) The name of the employee.
- (2) Training topics.
- (3) Hours of training.

(g) The facility, storage area, or vehicle storing biomass and appropriate feedstock, or any residue must:

- (1) have access controls in place, such as a locked door or fence with locked gate; and
- (2) be secured during nonbusiness hours.

(h) The land, building, vehicles, and containers must be maintained clean and free of other solid waste, other than in designated storage areas.

(i) Storage, including the retention, containment, or accumulation of solid waste, on a temporary basis

must be done in such a manner that it does not:

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

It is a rebuttable presumption that storage of biomass and appropriate feedstock, or any residue for more than six (6) months constitutes discarding and disposal.

(Solid Waste Management Board; [329 IAC 11.5-6-1](#))

Rule 7. Disposal

[329 IAC 11.5-7-1](#) Disposal and end use

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) Persons, generators, owners, or operators disposing of biomass, appropriate feedstock, or residue must make a waste determination and dispose as applicable at either of the following:

- (1) A facility permitted in Indiana under the following:

- (A) [329 IAC 3.1](#).
- (B) [329 IAC 4.1](#).
- (C) [329 IAC 10](#).
- (D) Incinerators permitted under [329 IAC 11](#).
- (E) [329 IAC 13](#).

- (2) An appropriate facility out of state.

(b) The waste received and the quality of materials produced may require a:

- (1) land application permit if land applying; or
- (2) beneficial use approval.

(Solid Waste Management Board; [329 IAC 11.5-7-1](#))

Rule 8. Closure

[329 IAC 11.5-8-1](#) Closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting biomass or appropriate feedstock.

(b) All biomass, appropriate feedstock, and residue must be:

- (1) removed from the:

- (A) building;
- (B) containers;
- (C) storage areas;
- (D) lagoons;
- (E) tanks; and
- (F) vehicles; and

- (2) disposed of according to [329 IAC 11.5-7-1](#);

within sixty (60) days of the registered facility no longer accepting biomass and appropriate feedstock.

(c) Any contaminants resulting from the storage or processing of biomass, appropriate feedstock, and residues that are above RISC industrial levels must be contained, removed, and disposed of

according to [329 IAC 11.5-7-1](#). This requirement does not include any contaminants that the owner or operator can demonstrate were existing before the storage or processing of biomass or appropriate feedstock.

(d) A registered facility must be certified closed under subsection (e) after all biomass, appropriate feedstock, and residue are removed and disposed.

(e) The owner or operator must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure.

(f) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining closure financial assurance.

(Solid Waste Management Board; [329 IAC 11.5-8-1](#))

Rule 9. Financial Assurance

[329 IAC 11.5-9-1](#) Financial assurance for cleanup and closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) All owners or operators that are required to register under this article shall establish financial assurance with the department for closure of the registered facility. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit and that are only processing manure are exempt from the requirement to obtain financial assurance under this rule. The financial assurance must be provided as a surety bond as specified in subsection (c) in the amount that will provide for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that will provide for closure is determined by the maximum amount in tons of biomass, appropriate feedstock, and residue that may be stored at the facility at one (1) time, multiplied by fifty dollars (\$50).

(c) The surety bond is established as follows:

(1) On forms:

- (A) provided by the commissioner; or
- (B) as approved by the commissioner.

(2) All surety bonds must contain the following:

- (A) The establishment of minimum bond amount determined by subsection (b).
- (B) Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of [329 IAC 11.5-8-1](#).
- (C) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.
- (D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

- (A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and
- (B) authorized to do business in Indiana.

(4) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) The owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must

be established in accordance with the following:

- (A) On forms provided by the commissioner or forms as approved by the commissioner.
- (B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.
- (C) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.
- (D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.
- (E) The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.
- (F) The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and a state of Indiana agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

- (1) The IDEM registration number, name, and address.
- (2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

- (1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond shall be deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.
- (2) Reestablish financial assurance within sixty (60) days after such an event. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in [IC 13-14](#) and [IC 13-30](#), any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be:

- (1) deemed to endanger human health or the environment; and
- (2) grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

(Solid Waste Management Board; [329 IAC 11.5-9-1](#))

SECTION 3. THE FOLLOWING ARE REPEALED: [329 IAC 11-17](#); [329 IAC 11-18](#); [329 IAC 11-19](#); [329 IAC 11-20](#).

[Notice of Public Hearing](#)

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